



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

COPY MAILED

JUN 2 8 2004

OFFICE OF PETITIONS

Applicant: Smith et al.
Appl. No.: 10/632,377
Filing Date: August 1, 2003
Title: METHOD OF ISOLATING STEM CELLS
Attorney Docket No.: 045331/262602
Pub. No.: US 2004/0023318 A1
Pub. Date: February 5, 2004

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on March 3, 2004.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains a mistake in independent claim 14, wherein "on" is misprinted as "or" in the phrase "said stem cells have a higher concentration of said detectable product than non-stem cells present in said population, and separating said stem cells from said non-stem cells of said population on the basis of said higher concentration of detectable product" is misprinted as "said stem cells have a higher concentration of said detectable product than non-stem cells present in said population, and separating said stem cells from said non-stem cells of said population or the basis of said higher concentration of detectable product."

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The error noted by requestor wherein "on" is misprinted as "or" is an Office error, but the mistake is a minor typographical error, which is clearly understandable to one of ordinary skill in reading the claim. The mistake is a minor typographical error which is clearly understandable from reading the claim in which the term is used, as terms are not read in a vacuum and it is clearly understood to be "on the basis of." Additionally, the phrase "on the basis of" is a common phrase in the art. The mistake does not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

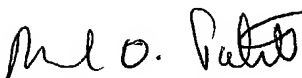
Any request for republication under 37 CFR 1.221(a), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: 703-872-9306

The application will be examined in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).



Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy